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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,472	06/23/2003	Michael John Naber	Naber.M-02	2698

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EXAMINER
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YIP, WINNIE S

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/602,472	NABER, MICHAEL JOHN	
	<b>Examiner</b> Winnie Yip	<b>Art Unit</b> 3637	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 23 June 2003.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-10 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) 1-4 and 8-10 is/are allowed.

6)  Claim(s) 5-7 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 23 June 2003 is/are: a)  accepted, or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 9/17/2003.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

### **DETAILED ACTION**

This is a first office action for application Serial No. 10/602,472 filed on June 23, 2003 which is a continuation in part of co-pending application Serial No. 10/330,524 filed December 26, 2002, now abandoned.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 5 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Haber (US Patent No. Surface et al. (US Patent No. 6,009,891)).

Surface et al. shows and discloses an apparatus capable for securing an umbrella, the apparatus comprising: an elongated flexible strap (i.e., 25) having an adjustable loop (31) at one end, and an eyelet (36) at another end, a buckle (46) providing means for adjusting length of the strap, and a securing line (62) having a proximal end (65) being removably fixed to the flexible strap and an distal end connected to a side panel which is capably anchored to be ground by stakes. Whereby the adjustable loop of the flexible strap is capably used to fix over an upper end of the umbrella, and the eyelet is capably engaging a rib tip of the umbrella as claimed.

Notice the umbrella is not part of the claimed invention.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Surface et al. '891 as applied to claim 5 above, and further in view of Visco (US Patent No. 4,364,193).

The claim is considered to meet by Surface et al. as explained and applied set forth above rejections except the Surface et al. does not specifically define the apparatus having the securing line having the distal end being connected to a ground stake as claimed. Visco teaches an umbrella comprising an apparatus for securing the umbrella on the ground surface, the apparatus including a flexible strap (30) connected to upper section of the umbrella, a securing line having a proximal ends secured to a flexible strap (30) and a distal end fixed to a ground stake (36) for pulling and tightening the flexible strap and securing the umbrella over the ground. It would have been obvious to one ordinary skill in the art, at the time the invention was made, to modify the apparatus of Surface et al. having the securing line having the proximal end connected to the flexible strap and the distal end connected to a ground stake as taught by Visco for securing the umbrella structure over the ground surface.

*Allowable Subject Matter*

5. Claims 1-4 and 8-10 are allowed.

6. The following is a statement of reasons for the indication of allowable subject matter: The prior art of record, whether taken individually or in combination, does not reveal or render obvious a shading apparatus, in combination, comprising an umbrella and an elongated flexible

strap tensioned over a canopy of the umbrella for securing the umbrella over the ground surface, the flexible strap having an adjustable ring fitted over an upper of the umbrella, an eyelet engaging a rib tip, and means for adjusting the length of the strap therebetween for tensioning the flexible strap as relative to the umbrella, and a securing line removably connecting the flexible strap to a ground stake, and method of assembling the apparatus as claimed.

*Citations*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. D'Luisse et al. '453, Connelly '576, Harris '066, Taylor '819, Conner '570, Isom '668, Moss '641, Kemp '463, Hutchison '698, Jones '706, Dahulich '685 teach various umbrellas having tightening means as similar to the claimed invention as claimed. Hoffman '840 teaches a strap having adjustable ring as claimed. Stephens '644, Turner '332, and Sporta '794 teach various flexible straps having structure similar to the claimed invention.

*Inquiry Contacts*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Winnie Yip whose telephone number is 703-308-2491. The examiner can normally be reached on M-F (9:30-6:30), Second Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Winnie Yip  
Primary Examiner  
Art Unit 3637

wsy  
December 10, 2004